IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 514 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SHARADKUMAR PARMANANDBHAI BHATT - Appellant(s)
Versus
GUJARAT STATE ROAD TRANSPORT CORPORATION & 1 - Defendant(s)

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Appearance :
MR DP KINARIWALA for Appellant(s) : 1,
MR MD PANDYA for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 is directed against the judgment and award dated 7/9/1987 passed by the learned Motor Accident Claims Tribunal (Main), Bhavnagar in M.A.C.P. No.108 of 1982 for enhancement of the amount of compensation.

2. In a motor vehicle accident that took place on 15th November, 1981, between the bus belonging to the Gujarat State Road Transport Corporation (respondent no.1 corporation herein) driven by its driver (respondent no.2 herein) and the motor cycle driven by the appellant herein, who was a medical practitioner at the relevant time, the appellant sustained serious injuries more particularly on his right leg resulting into amputation of the leg from above the knee which resulted into 75% permanent partial disability. In the Claim Petition claiming Rs.3,20,000/- as compensation, the Tribunal

attributed 50% negligence to the appellant and therefore, after assessing the compensation at Rs.90,000/-, awarded Rs.45,000/- with interest at 12% p.a. from the date of application (7/5/1982) till realization. Hence this appeal for enhancement of the compensation.

3. On 15/11/1981, the appellant was riding his motor cycle from Palitana to Sihor with one Bavaji Bhagwandas. On the way to village Sarod, a bus being driven by respondent no.2 belonging to the respondent Corporation was coming from the opposite direction and dashed with the motor cycle. In the collision between the two vehicles, the appellant sustained serious injuries resulting into amputation of the right leg from above the knee. The pillion rider also sustained injuries. Both of them filed claim petitions. Both the claimants examined themselves as eye witnesses to the accident. On behalf of the opponents, the bus driver was examined as the sole eye witness. The motor cycle of the appellant was climbing up the

slope whereas the bus was coming down. The Tribunal held that the accident was caused by negligence of both the bus driver and the appellant and attributed negligence to the two drivers at 50:50.

4. On the question of quantum of compensation, the Tribunal assessed the following amounts:

Rs.25,000/- - for pain, shock and suffering

Rs.20,000/- - for medical treatment

Rs. 9,000/- - for loss of past income

Rs.36,000/- - for loss of future earning capacity.

Rs.90,000/-

For assessing the loss of past income and the loss of future earning capacity, the Tribunal assessed the income of the appellant at Rs.1,500/- but assessed the loss of future earning capacity at only Rs.200/- per month i.e. Rs.2,400/- per annum and applying the multiplier of 15 years purchase (looking to the appellant's age - 30 years - on the date of the accident), the compensation for future earning capacity was assessed at Rs.36,000/-.

Assessing the total amount of Rs.90,000/-, the Tribunal awarded Rs.45,000/- by halving the compensation on account of the finding that the contributory negligence of the deceased was 50%.

5. Mr.Kinariwala, learned counsel for the appellant has vehemently submitted that the Tribunal committed a serious error in holding that the appellant was guilty of contributory negligence and submitted in the alternative that even if any negligence could be attributed to the appellant, it could not be more than 10%. On the question of quantum of compensation, it is submitted that when the appellant was a medical practitioner aged 30 years and lost his right leg from above the knee on account of amputation necessitated by the serious injury sustained by the appellant in the accident, the Tribunal grossly erred in assessing loss of future earning capacity only at Rs.200/- per month. It is submitted that apart from the fact that appellant was a medical practitioner and even for practicing in a dispensary, a doctor

needs to have considerable mobility and flexibility of both the legs which the appellant has lost on account of amputation of the right leg from above the knee. It is submitted that on account of the accident, the appellant has become permanently disabled from practicing as a doctor.

6. On the other hand Ms.Maya Desai, learned advocate for the respondent has supported the award of the Tribunal.

7. As far as the question of negligence is concerned, we have gone through the First Information Report (FIR) as well as Panchnama which are at Exhs.17 and 71 respectively. The FIR was lodged by the appellant himself who deposed at Exh.68. According to the appellant, he was riding the motor cycle while returning to their village from Songadh along with his compounder Bhagwandas. It appears from the Panchnama that after the accident, involving collision between the bus and motor cycle, the bus went ahead for about 150 to 175

feet and then stopped, where as the motor cycle stopped after traveling 42 feet from the place of the accident. It also appears that the S.T. driver had applied the brakes of the bus just about 9 feet before the place of impact. The road was of the width of 21 feet with kachha road of 3 feet on either side, making it a road with total width of 27 feet. The S.T. bus was of the length of 29 feet and width of 8 feet. It appears that the rival versions of both the bus driver and motor cyclist were that the other vehicle was being driven in a zig-zag manner. However, it is pertinent to note that the road had a slope and the bus was coming down the road where as the motor cycle was climbing up the road. In this view of the matter, it is but natural that the speed of the bus descending the slope would be more than the speed of the ascending vehicle. In view of the fact that the bus stopped at a distance of 150 feet after the impact whereas the motor cycle was found about 42 feet away after the impact shows that though both the vehicles were

being driven with considerable speed but the speed of the motor cycle could not have been as much as the speed of the bus, because the motor cycle was going up the road. The bus being the bigger vehicle and it was descending therefore, the bus driver was required to take greater care. In the facts and circumstances of the case, therefore, we are of the view that while the appellant-motor cyclist cannot be absolved altogether, the bus driver must be held responsible for the accident to the extent of 75% where as the appellant ought to be held responsible for the accident to the extent of 25%.

8. Coming to the question of quantum of compensation, while the amount of compensation awarded by the Tribunal for pain, shock and suffering, medicines and loss of past income appears to be reasonable, having regard to the awards which were being made at the relevant time, we find considerable substance in the submission of the learned counsel for the appellant-claimant that the Tribunal ought

not to have assessed the loss of future earning capacity at only Rs.200/- per month. Admittedly, the appellant was a medical practitioner and he lost his right leg from above the knee. Apart from the fact that the Jaipur foot would fit in well, when the amputation is below the knee, the question of flexibility of the knee would assume great importance. Even if the patient is able to move with fitment of Jaipur foot, there would be severe restriction on the movement of the leg. As a medical practitioner, the appellant had to go outside on visits in nearby villages and on the date of accident also, the appellant was riding his motor cycle along with his compounder who was the pillion rider. The amputation of the right leg from above the knee would therefore make visits outside the villages impossible. Even within the village and within the dispensary, the permanent disability suffered by the claimant would severely restrict his movements and would definitely make substantial adverse impact on the medical practice. We are, therefore, unable to

appreciate as to on what basis, the Tribunal assessed the loss of future earning capacity only at Rs.200/- per month. It is true that some suggestions were made in the cross-examination that the appellant was still practicing as a doctor and that he was also granted a gas agency on account of his handicap. The suggestions were denied by the appellant in his cross-examination. However, there is no evidence on record to show that the appellant was awarded a gas agency or that the appellant continued to practice as a doctor. In view of the aforesaid evidence, we would be justified in relying upon the schedule to the Workmen's Compensation Act, 1923, particularly Schedule 1, Part II, Entry 19 in which permanent disability for loss of one leg is assessed at 60%.

9. As far as the income of the appellant is concerned, his monthly income was Rs.1,500/- per month after deducting all the expenses. Further considering the fact that the appellant was aged only 28 years on the date of accident, for the

purpose of computation of loss of future earning capacity, we would be justified in enhancing the datum figure by 50% and accordingly we would take the monthly income of the appellant at Rs.2,250/- per month. Assessing the permanent partial disability at 60%, as discussed above, the loss of future earning capacity would be Rs.1,350/- per month i.e. 16,200/- per annum. Since the appellant was only 28 years old on the date of accident and considering the conservative assessment of future income potentiality, the multiplier of 18 would be quite appropriate having regard to Schedule II to the Motor Vehicles Act, 1988. Accordingly the compensation would come to Rs.2,91,600/-. Adding to the said amount, the compensation amounts awarded under the other heads (Rs.25,000/- for pain, shock and suffering, Rs.20,000/- for medical expenses and Rs.9,000/- for loss of past income), the gross amount would now come to Rs.3,45,600/-.

10.Since we have assessed the contributory negligence

of the appellant at 25%, 75% of the aforesaid amount would work out to Rs.2,59,200/- i.e. Rs.2,59,200/- will be the total compensation payable by the respondents to the appellant. Deducting Rs.45,000/- therefrom (the amount already awarded by the Tribunal), the appellant is entitled to get an additional amount of Rs.2,14,200/-.

11. Accordingly this appeal is partly allowed. The respondent corporation shall pay the appellant additional amount of Rs.2,14,200/- with proportionate costs and interest at the rate of 7.5% on the additional amount of Rs.2,14,200/- from the date of filing the claim petition till the date of realization. The respondent shall deposit the amount within two months from the date of receipt of the certified copy of this judgment.

12. Direct service is permitted.

(M.S.SHAH, J.)

(K.M.MEHTA, J.)

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